

CCRB INVESTIGATIVE RECOMMENDATION

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| Investigator: Kelly Lyon | Team: Squad #11 | CCRB Case #: 202002331 | <input checked="" type="checkbox"/> Force <input checked="" type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Friday, 03/20/2020 11:00 PM | Location of Incident: § 87(2)(b) (by Domino's Pizza) | 18 Mo. SOL 5/4/2022 | Precinct: 44 |
| Date/Time CV Reported Tue, 03/24/2020 3:19 PM | CV Reported At: CCRB | How CV Reported: Call Processing System | Date/Time Received at CCRB Tue, 03/24/2020 3:19 PM |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
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| Subject Officer(s) | Shield | TaxID | Command |
|---------------------|--------|--------|---------|
| 1. LSA Michael Raso | 00000 | 933235 | SRG |
| 2. DTS Joseph Spina | 6037 | 953436 | SRG |
| 3. An officer | | | |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|----------------------|-----------|--------|----------|
| 1. DTS Steven Cruver | 2950 | 950250 | SRG |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------|---|-----------------------------|
| A . LSA Michael Raso | Force: Lieutenant Michael Raso used physical force against § 87(2)(b) | |
| B . An officer | Discourtesy: An officer spoke discourteously to § 87(2)(b) | |
| C . LSA Michael Raso | Discourtesy: Lieutenant Michael Raso spoke discourteously to § 87(2)(b) | |
| D . DTS Joseph Spina | Discourtesy: Detective Joseph Spina spoke discourteously to § 87(2)(b) | |

Case Summary

On March 24, 2020, § 87(2)(b) filed this complaint with the CCRB on behalf of her husband § 87(2)(b) by phone and that same day CCRB Intake contacted § 87(2)(b) for follow up information. There was a duplicate complaint filed by a bystander, § 87(2)(b) with IAB by phone on March 20, 2020, which was received at the CCRB on April 2, 2020, under IAB log #20-9173. This complaint was originally assigned to Investigator Matthew Corwin. On May 12, 2021, this complaint was reassigned to Investigator Kelly Lyon.

On March 20, 2020, at approximately 11:00 p.m., in the vicinity of the Domino's Pizza located at § 87(2)(b) in the Bronx, § 87(2)(b) went inside to request a free slice of pizza and was refused. Lieutenant Michael Raso, Det. Joseph Spina and Det. Steven Cruver of the Strategic Response Group arrived on scene. Three additional unidentified officers arrived on scene but did not interact with § 87(2)(b). § 87(2)(b) exited the location and Lieutenant Raso allegedly brought him to the ground (**Allegation A: Force**, § 87(2)(g)). § 87(2)(b) went unconscious and woke up on the ground with a head injury. An officer told § 87(2)(b) "You disgust us" (**Allegation B: Discourtesy**, § 87(2)(g)).

§ 87(2)(b) approached § 87(2)(b) and Lieutenant Raso told him that if he wanted to record, he needed to go down the block because he did not want to "smell his breath" (**Allegation C: Discourtesy**, § 87(2)(g)). Det. Spina told § 87(2)(b) "Don't be a dick," (**Allegation D: Discourtesy**, § 87(2)(g)). Eventually, an ambulance arrived, and it was determined that § 87(2)(b) did not need to go to the hospital.

This incident resulted in no summonses or arrests.

The investigation obtained five body-worn camera videos (**BR 01, BR 02, BR 03, BR 04, and BR 05**; *videos* and **BR 06, BR 07, BR 08, BR 09, and BR 10**; *summaries*). There were no TARU cameras in the area and no surveillance footage was obtained from Domino's Pizza.

Findings and Recommendations

Allegation (A) Force: Lieutenant Michael Raso used physical force against § 87(2)(b).

It was undisputed that § 87(2)(b) went to the ground and sustained a laceration to the head during this incident. § 87(2)(g)

§ 87(2)(b) stated (**BR 11**) that he went to Domino's Pizza to ask for a free slice of pizza. He spoke to an employee named § 87(2)(b) who stated she could not give § 87(2)(b) a free slice of pizza at that time. § 87(2)(b) said, "Okay," and left the Domino's Pizza. § 87(2)(b) took ten steps south and then went unconscious. § 87(2)(b) did not state whether he was under the influence of any drugs or alcohol.

When § 87(2)(b) regained his consciousness, he was on the ground and Lieutenant Raso, Det. Spina, and Det. Cruver were surrounding him. § 87(2)(b) did not know what had happened. § 87(2)(b) touched the back of his head and felt that it was bleeding. § 87(2)(b) asked the officers what happened, and none of them answered. § 87(2)(b) asked what he was doing on the ground and Lieutenant Raso told him that he had a head injury, and they were waiting for an ambulance to arrive. § 87(2)(b) had no recollection of what had happened to him. § 87(2)(b) could not recall anything that happened prior to losing consciousness that would have led to a physical altercation with the police officers and he had not even observed the officers prior to losing consciousness. At some point during the incident, § 87(2)(b) arrived, but § 87(2)(b) did not know when. § 87(2)(b) did not receive medical attention for his injuries because he did not want to go to the hospital due to the Covid-19 pandemic.

In her DIRAD message to CCRB Intake (**BR 12**), § 87(2)(b) stated that there was an altercation in which three officers stopped § 87(2)(b) at Domino's Pizza. Two officers ran up behind § 87(2)(b) and slammed him on his head. § 87(2)(b) went unconscious and came to while lying on the ground. § 87(2)(b)'s head was bleeding, and his tailbone was bruised.

Officers let him know they were waiting for EMS. In her DIRAD message, § 87(2)(b) did not specify which part of the incident she was present for.

§ 87(2)(b) was uncooperative with providing a statement (**BR 13**).

§ 87(2)(b) provided a photograph of a laceration to the back of § 87(2)(b)'s head on March 24, 2020, via email (**BR 14**). There was no information about when or where this photograph was taken.

In his call to IAB (**BR 15**), § 87(2)(b) stated he was at Domino's Pizza when § 87(2)(b) exited the building and police knocked him to the ground. § 87(2)(b) was unconscious for seven to eight minutes. During his call to IAB, § 87(2)(b) was approximately 75 feet away from § 87(2)(b) and the officers and § 87(2)(b) was lying on the ground, conscious, and speaking to the officers.

§ 87(2)(b) was uncooperative with providing a CCRB statement (**BR 16**).

Domino's Pizza manager § 87(2)(b) was uncooperative with providing any information regarding this incident (**BR 39**).

Lieutenant Raso stated (**BR 17**) that he observed, from one to two car-lengths away, a physical altercation going on inside Domino's Pizza that involved customers and staff members. Lieutenant Raso told Det. Spina and Det. Cruver, "Let's just exit the vehicle and see if we can break this up before it becomes a bigger incident. The staff is probably overwhelmed and scared." Lieutenant Raso believed Det. Spina and Det. Cruver also observed the altercation.

Lieutenant Raso, Det. Spina, and Det. Cruver exited the vehicle, and the altercation began to pour out the door into the street. It appeared there was a fight between two customers and the Domino's Pizza employees were trying to push the customers out of the restaurant. § 87(2)(b) was one of the primary aggressors. There was a lot of yelling and screaming. § 87(2)(b) was aggressively yelling profanities and said, "I'm going to fucking kill you," to the customer with whom he was fighting.

Lieutenant Raso observed the altercation as he was approaching for under a minute and then grabbed § 87(2)(b) by the back of his shirt to prevent him from assaulting the other customer, pulled him back a couple feet, and gave commands to stop fighting. Lieutenant Raso released his grip and § 87(2)(b) lunged back toward the other customer. Lieutenant Raso felt § 87(2)(b) was going to continue to fight because he moved in an aggressive fighting stance with his arms out in front of him, so Lieutenant Raso pulled § 87(2)(b) back again by the shirt, harder this time.

Lieutenant Raso lost his footing and fell over a pile of garbage. § 87(2)(b) fell backward as well, tripped over the pile of garbage into the street, and possibly made contact with the wheel of the police vehicle. § 87(2)(b) hit his head and had a laceration on the back of his head. Lieutenant Raso did not see § 87(2)(b) make contact with the wheel but he believed that was the case based on where § 87(2)(b) was lying on the ground near the wheel.

Lieutenant Raso stood up and walked over to § 87(2)(b) to make sure he was alright and carried him over to the sidewalk. Lieutenant Raso did not describe how he carried § 87(2)(b). Lieutenant Raso requested EMS to the location because he wanted § 87(2)(b) to be checked out due the laceration and because he had hit his head. § 87(2)(b) was clearly intoxicated because he was slurring his words and smelled of alcohol, however, this was not a factor Lieutenant Raso considered when calling for EMS. § 87(2)(b) never appeared to be unconscious.

Det. Cruver (**BR 19**) described observing a dispute outside of Domino's Pizza. Det. Cruver got out of his police vehicle and got in between what appeared to be two groups arguing. § 87(2)(b) was either drunk or harassing the customers and the Domino's Pizza employees wanted him out of the store. Det. Cruver went inside the Domino's Pizza and talked to a manager and employees to figure out what had happened. The manager was shouting that § 87(2)(b) did something but Det. Cruver could not remember what it was. Det. Cruver spoke to the employees for one to five minutes then went outside. No one wanted to press criminal charges.

Det. Cruver exited Domino's Pizza and § 87(2)(b) was on the ground lying on the sidewalk. Det. Cruver did not observe Lieutenant Raso bring § 87(2)(b) to the ground. Det. Cruver did not observe Lieutenant Raso, or Det. Spina use any force against § 87(2)(b). Det. Cruver did not see how § 87(2)(b) got to the ground. Det. Cruver never learned that Det. Spina or Lieutenant Raso took § 87(2)(b) to the ground. Det. Cruver did not remember observing any injuries on § 87(2)(b).

Det. Spina similarly stated (**BR 20**) that he observed people yelling outside of Domino's Pizza. At least five people appeared to be involved in the dispute. § 87(2)(b) was getting very close and putting his hands in people's faces. Det. Spina, Det. Cruver, and Lieutenant Raso got out of the vehicle to intervene before it got more hostile.

§ 87(2)(b) was screaming and threatening other people. His tone of voice was aggressive and angry. Det. Spina could not remember exactly what § 87(2)(b) was saying. It seemed to be a dispute between § 87(2)(b) the Domino's Pizza employees, and other civilians. Lieutenant Raso pulled § 87(2)(b) back to get him out of the fight. Det. Spina did not recall how Lieutenant Raso pulled § 87(2)(b) back. § 87(2)(b) immediately went back into the fight and was screaming and threatening. Lieutenant Raso pulled him back again and they both tripped outside over garbage which was outside of the Domino's Pizza. Det. Spina did not recall how far Lieutenant Raso pulled § 87(2)(b) before they fell. They fell off the sidewalk into the street area. Det. Spina did not recall what kind of injury § 87(2)(b) sustained. Det. Spina did not see § 87(2)(b) hit his head on anything.

According to the details section of the TRI incident report (**BR 18**), Lieutenant Raso observed § 87(2)(b) and another male attempting to assault each other inside of Domino's Pizza. Lieutenant Raso attempted to deescalate and gain control of the situation by pulling § 87(2)(b) back by the sweatshirt. § 87(2)(b) reentered the Domino's Pizza and continued to escalate the original dispute. Lieutenant Raso pulled § 87(2)(b) back by his sweatshirt again to prevent further violence. Then Lieutenant Raso and § 87(2)(b) tripped over a large pile of garbage bags and fell to the ground. Lieutenant Raso landed in the garbage and § 87(2)(b) landed past the sidewalk and hit the parked police vehicle. § 87(2)(b) suffered a minor laceration to the rear of his head.

Lieutenant Raso's body-worn camera footage (**BR 01; video, BR 06; summary**) and Det. Spina's body-worn camera footage (**BR 05; video, BR 10; summary**) both begin after § 87(2)(b) was already on the ground. Lieutenant Raso's body-worn camera opens with Lieutenant Raso grabbing § 87(2)(b) by the shoulder. § 87(2)(b) appears to be asleep on the ground. At 00:42 seconds, § 87(2)(b) appears to wake up and moves his arms. At 1:00 minute, Lieutenant Raso engages his body-worn camera and tells § 87(2)(b) that he is going to the hospital. § 87(2)(b) begins speaking and tells Lieutenant Raso to "shut up." At 1:25 minutes, § 87(2)(b) appears to try to get up off the ground and Lieutenant Raso pushes arm down and tells him to stay on the ground.

NYPD Patrol Guide procedure 221-01 (**BR 21**) states that force may be used when it is reasonable to place a person in custody or to prevent escape from custody. Any application of force must be reasonable under the circumstance and the following should be considered in determining whether it is reasonable: The nature and severity of the crime/circumstance, actions taken by the subject, duration of the action, immediacy of perceived threat or harm to the subject, MOS, or bystanders, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest by flight, number of subjects in comparison to number of MOS, size, age, and condition of subject compared to that of the MOS, subject's violent history, presence of hostile crowd or agitators, and whether the subject is apparently under the influence of stimulants/narcotics.

§ 87(2)(g)

Allegation (B) Discourtesy: An officer spoke discourteously to § 87(2)(b)

It was undisputed that a male officer and female officer in plainclothes arrived on the scene and the male officer said, “You disgust us,” to § 87(2)(b).

§ 87(2)(b) never alleged that an officer said, “You disgust us,” however, it was caught on Det. Spina’s body-worn camera footage (**BR 05; video, BR 10; summary**) at 2:26 minutes.

Lieutenant Raso (**BR 17**) had no independent recollection of there being another unit on scene. Lieutenant Raso did not recognize the male officer shown standing to the right of himself from 2:02 minutes to 2:22 minutes of Det. Spina’s body-worn camera (**BR 05; video, BR 10; summary**). This video clip shows a male officer and a female officer in plainclothes, and the male officers says, “You disgust us,” to § 87(2)(b). Lieutenant Raso explained that there were three separate commands that could have been patrolling that area but did not specify which ones.

Similarly, Det. Cruver (**BR 19**) did not recognize the male officer in plainclothes shown to the right of Lieutenant Raso standing next to a female officer who was also in plainclothes between 1:54 minutes to 2:23 minutes of Det. Spina’s body-worn camera (**BR 05; video, BR 10; summary**). This clip did not independently refresh Det. Cruver’s memory regarding any additional officers on scene. Det. Cruver did not remember hearing an officer say, “You disgust us,” to § 87(2)(b).

Det. Spina consistently stated (**BR 20**) that he never heard an officer say, “You disgust us,” to § 87(2)(b). Det. Spina also did not recognize the male officer in plainclothes shown to the right of Lieutenant Raso standing next to a female officer who was also in plainclothes between 1:03 minutes to 2:23 minutes of his body-worn camera (**BR 05; video, BR 10; summary**).

Event § 87(2)(b) showed that the citywide crime lieutenant, identified as Lieutenant Raso, was on the scene (**BR 38**). The event chronology did not show any additional plainclothes units at the location. Roll calls from the 42nd Precinct (**BR 22**), 44th Precinct (**BR 23**), PSA 7 (**BR 24**), the 42nd and 44th Precinct Detective Squads (**BR 25** and **BR 26**), Narcotics Borough Bronx (**BR 27**), Patrol Bronx Specialized Unit (**BR 28**), and Gang Squad Bronx (**BR 29**) did not show any partnered pairs of a male and female officer in any plainclothes assignment. There were no stop, question and frisk reports prepared for § 87(2)(b) (**BR 30**) within the confines of the 42nd or 44th Precincts.

§ 87(2)(g)

Allegation (C) Discourtesy: Lieutenant Michael Raso spoke discourteously to § 87(2)(b)

It was undisputed that § 87(2)(b) was recording the interaction and Lieutenant Raso told him to go down the street if he wanted to continue recording and that he did not want to “smell his breath.”

In his call to IAB, § 87(2)(b) stated (**BR 15**) that he wanted to ensure that an ambulance was coming for § 87(2)(b). He was in front of the Domino’s Pizza approximately 10 steps away from § 87(2)(b) and the officers attempting to record when a lieutenant became aggressive told him to “get away.” § 87(2)(b) then walked away and called IAB.

§ 87(2)(b) was uncooperative with providing a CCRB statement (**BR 16**).

During his CCRB interview (**BR 17**), Lieutenant Raso was shown his body-worn camera footage (**BR 01; video, BR 06; summary**) from 13:00 minutes to 13:55 minutes. Lieutenant Raso stated that he told the individual filming, § 87(2)(b) to move down the block because he was close enough to come into physical contact with the officers, he was agitating the situation by speaking in the background. Lieutenant Raso told § 87(2)(b) to “shut [his] mouth” as a request to stop talking. Lieutenant Raso stated he did not want to “smell [his] breath” because § 87(2)(b).

was standing too close while Lieutenant Raso was trying to work. Lieutenant Raso did not remember whether he smelled alcohol on § 87(2)(b). Lieutenant Raso did not believe § 87(2)(b) was involved in the earlier fight with § 87(2)(b).

Lieutenant Raso's body-worn camera (**BR 01; video, BR 06; summary**) shows at 13:15 minutes, Lieutenant Raso talking to § 87(2)(b) who is on the sidewalk within a few feet from the officers recording. Lieutenant Raso tells § 87(2)(b) to "shut his mouth." Lieutenant Raso then touches § 87(2)(b)'s torso and tells him to go down the street while escorting him further away from § 87(2)(b). Lieutenant Raso tells § 87(2)(b) that if he wants to record, he needs to go "down there" because he does not want to "smell his breath." § 87(2)(b) continues to hold his phone up as if he is recording when Lieutenant Raso turns back around and returns to § 87(2)(b).

NYPD Patrol Guide procedure 200-02 (**BR 32**) states that officers are to respect the dignity of each individual and render services with courtesy and civility.

In DAO-DCT Case Number: 2015-15012 (**BR 33**), the court held that an officer is not permitted to use profanity when the profanity serves no legitimate purpose but to belittle the civilian.

§ 87(2)(g)

Allegation (D) Discourtesy: Detective Joseph Spina spoke discourteously to § 87(2)(b).

It was undisputed that Det. Spina said, "Don't be a dick," to § 87(2)(b). § 87(2)(b) never alleged Det. Spina said, "Don't be a dick," however, it was captured on Det. Spina's body-worn camera (**BR 05; video, BR 10; summary**).

Det. Spina originally stated (**BR 20**) he did not use any profanity toward § 87(2)(b) and did not remember telling § 87(2)(b) "Don't be a dick."

During his CCRB interview, Det. Spina was shown his body-worn camera (**BR 05; video, BR 10; summary**) at 23:12 minutes. Det. Spina explained that he did not remember saying, "Don't be a dick," but stated it could have been him who said it. Det. Spina stated that he was not saying it in a "bad way" either. Det. Spina explained that they were trying to help § 87(2)(b) and he was cursing at them.

NYPD Patrol Guide procedure 200-02 (**BR 32**) states that officers are to respect the dignity of each individual and render services with courtesy and civility.

In DAO-DCT Case Number: 2015-15012 (**BR 33**), the court held that an officer is not permitted to use profanity when the profanity serves no legitimate purpose but to belittle the civilian.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 33**).
- § 87(2)(b) has been named a victim in three additional CCRB complaints and four allegations (**BR 34**).
 - § 87(2)(b)
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- Lt. Raso has been a member of service for 16 years and has been a subject in 18 CCRB complaints and 58 allegations, of which 11 were substantiated:

- Case #200801117 involved a substantiated stop of a person and gun pointed allegations. The Board recommended command discipline. The NYPD imposed instructions.
- Case #200902991 involved a substantiated vehicle stop allegation. The Board recommended charges. The NYPD imposed instructions.
- Case #201106779 involved a substantiated vehicle stop allegation. The Board recommended charges. The NYPD took no disciplinary action due to statute of limitations.
- Case #201408512 involved substantiated property damage, premises entered and searched allegations. The Board and the NYPD both recommended and imposed formalized training.
- Case #201502152 involved substantiated vehicle search and frisk of a person allegations. The Board recommended charges. The NYPD imposed no discipline.
- Case #201505414 involved substantiated premises entered and searched, and property damage allegations. The Board recommended charges. The NYPD imposed no discipline.
- § 87(2)(g) [REDACTED].
- Det. Spina has been a member-of-service for seven years and has been a subject in three CCRB complaints and 11 allegations, of which four were substantiated.
 - 201310805 involved substantiated allegations of frisk, retaliatory summons, threat of arrest, and vehicle search. The Board recommended command discipline and the NYPD did not impose any disciplinary action.
 - § 87(2)(g) [REDACTED].
- Det. Cruver has been a member of service for 10 years and named a subject in five additional CCRB complaints and 15 allegations, two of which were substantiated.
 - 201905408 involved substantiated allegations of a failure to provide a business card and a stop. The Board recommended Command Discipline A and the NYPD has yet to impose discipline.
 - § 87(2)(g) [REDACTED].

Mediation, Civil and Criminal Histories

- § 87(2)(b) [REDACTED] declined to mediate this complaint.
- As of July 28, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in relation to this incident (**BR 35**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

Squad No.: 11

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|---------------|--------------------------------|--|---------------------------|
| Investigator: | <u>Kelly Lyon</u> Signature | <u>Inv. Kelly Lyon</u> Print Title & Name | <u>02/11/2022</u> Date |
| Squad Leader: | <u>Edwin Pena</u> Signature | <u>IM Edwin Pena</u> Print Title & Name | <u>02/11/22</u> Date |
| Reviewer: | <u></u> Signature | <u></u> Print Title & Name | <u></u> Date |